IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13307 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANAND

Versus

COMMISSIONER OF TRANSPORT

Appearance:

MR KETAN D SHAH for Petitioner No. 1

MS NANDINI JOSHI, AGP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 28/10/2004

ORAL JUDGEMENT

1.0 In this petition the petitioner has prayed for a a direction against the respondent authorities against ignoring GVW mentioned in the RC Book and recovering overload charges and compounding fees in respect of his vehicle. The grievance of the petitioner is that though the laden weight of the vehicle is less than the certified limits under the Registration Certificate, the vehicle is booked for carrying excess weight and heavy

penalty is being imposed upon the petitioner for the alleged excess weight.

2.0 The very same issue has been raised in Special Civil Application No.11643/04 and allied matters and this Court has by judgement and order dated 14th October 2004 partly allowed the said petitions and it is held that the Motor Vehicle Officers under section 213 of the Act cannot take any penal action against the petitioners therein if the vehicles of the petitioners are carrying goods in consonance with the gross carrying capacity mentioned in the certificate of registration.

3.0 Therefore, for the reasons stated in the aforesaid judgement the petition is partly allowed. It is declared that if the vehicle of the petitioner is carrying the gross laden weight as per the certificate of registration, the respondent shall not take any penal action in respect of the vehicle of the petitioner. However, as stated in the above judgement, the prayer regarding refund of the penalty or fine already paid is not rejected. It is clarified that if the certificate of registration is not issued in accordance with the provisions of the Act, it will be open for the respondents to take appropriate action after following the proper procedure as contemplated under the Act. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]